# APPENDIX

## APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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No. 1996—August Term, 1992

(Argued: July 14, 1993 Decided: September 21, 1993)

Docket No. 93-2308

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MICHAEL AUSTIN,
*Petitioner-Appellant,*

—v.—

CHARLES HEALEY, United States Marshal
for the Eastern District of New York,
*Respondent-Appellee.*

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Before:

MAHONEY, MCLAUGHLIN and JACOBS,
*Circuit Judges.*

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VICTORIA TOENSING, Washington, DC (Joseph E. diGenova, Steven L. Zelinger, Suzanne M. Dohrer, Manatt, Phelps & Phillips, Washington, DC, of counsel), *for Petitioner-Appellant.*

CHARLES E. ROSE, Assistant United States Attorney, Eastern District of NY (Barbara Underwood, Chief Assistant United States Attorney, Eastern District of New York, Peter A. Norling, David C. James, Assistant United States Attorneys, of counsel), *for Respondent-Appellee.*

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McLAUGHLIN, *Circuit Judge*:

Petitioner Michael Austin appeals from a judgment entered in the United States District Court for the Eastern District of New York (Edward R. Korman, *J.*) denying his petition for a writ of habeas corpus. By his petition, Austin sought review of the order of the extradition magistrate (Zachary M. Carter, *M.J.*) certifying his extraditability to the United Kingdom to face murder charges.

In this appeal, Austin's principal challenge is to the jurisdiction of the extradition magistrate. He attacks a local court rule that automatically assigns extradition proceedings to magistrate judges. Austin reads the extradition statute, 18 U.S.C. § 3184 (Supp. 1992), to require that an Article III judge *personally* assign a magistrate to a *particular* extradition matter, and thereafter retain supervisory authority over the case. Alternatively, he argues that the automatic designation of magistrates to conduct extradition proceedings violates Article III of the Constitution.

Finding no infirmity in the procedure of the district court, or in the proceedings below, we affirm.

## BACKGROUND

On March 5, 1992, two unidentified assailants assassinated David George Wilson, a British accountant and commodities broker, in his garage in Lancashire, England. According to British authorities, Wilson's murder stemmed from his involvement with Austin and others in an international investment fraud scheme. At the extradition hearing, the government provided the following account of the events leading up to the British government's request for Austin's extradition.

Posing as a Mexican Army colonel, Austin represented that he had influence with the Mexican government and had access to a large supply of Marlboro cigarettes manufactured in Mexico. Austin engaged Wilson to line up

European investors for the cigarettes, which were to be shipped from the United States. The investors were asked to open letters of credit in Austin's favor when the ship set sail for Europe. The cigarettes, however, never existed; Austin's plan was to have the ship scuttled while at sea and to abscond with the investors' money.

Repeated shipping delays made some investors suspicious and they asked the Dutch and British authorities to investigate Austin. Upon information provided by the Dutch, the British arrested Wilson and questioned him about his role in the scam. After he was released, Wilson admitted to Austin that he was cooperating with the police.

His plan unraveling, Austin decided that Wilson knew too much and had to be eliminated. By telephone and fax from his office in New York City, Austin arranged for extensive surveillance of Wilson in the days immediately preceding the killing. Austin also told other business associates that he intended to hire assassins to kill Wilson because Wilson owed him money and because Wilson was cooperating with the police. After Wilson's murder, Austin became a suspect in the murder investigation in England.

On April 1, 1992, the Magistrate's Court at Lancashire issued a warrant for Austin's arrest on the charge of conspiracy to murder Wilson.[1] Because Austin was still in the United States, the United Kingdom requested Austin's provisional arrest by diplomatic note to the State Department for purposes of extradition. On behalf of the British government, the United States Marshal filed a complaint in the Eastern District seeking Austin's provisional arrest.

Pursuant to an Eastern District local court rule, the matter of Austin's extradition was assigned directly to a

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[1] On August 27, 1992, the Magistrate's Court issued a second arrest warrant, adding the substantive crime of murder.

magistrate judge. *See* Rule 9 of the Rules for Magistrate Judges, United States District Courts for the Eastern and Southern Districts of New York ("Rule 9").[2] Based upon the Marshal's complaint, the diplomatic note and the British arrest warrant, Magistrate Judge A. Simon Chrein issued the provisional arrest warrant on April 3, 1992. Austin was then arrested in New York City on July 15, 1992.

The following January, an extradition hearing was conducted before Magistrate Judge Zachary W. Carter (the "extradition magistrate"). Relying primarily upon documents and affidavits from England, the extradition magistrate concluded that there was probable cause to believe Austin committed the crimes charged. Accordingly, in an order dated January 29, 1993, he certified Austin's extraditability to the United Kingdom.

On March 2, 1993, Austin filed the present petition for a writ of habeas corpus in the district court, challenging the order of extraditability. Austin argued that: (1) the admission of multiple layers of hearsay during the extradition hearing violated the Due Process Clause and the extradition treaty; (2) the evidence was insufficient to support a finding of probable cause; and (3) the extradition magistrate erred when he denied certain requests for discovery. Notably, Austin did not attack Rule 9. In a written decision, the district court rejected each of Austin's three contentions and denied Austin's petition.

Austin now appeals.

## DISCUSSION

"Extradition is the process by which a person charged with or convicted of a crime under the law of one state is arrested in another state and returned for trial and pun-

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[2] Rule 9 provides: "Pursuant to 18 U.S.C. Sec. 3184 magistrates are empowered to issue warrants for the apprehension of persons and conduct hearings and consider the evidence in the extradition proceedings referred to therein."

ishment." *Restatement (Third) of the Foreign Relations Law of the United States* § 474, at 556-57 (1987). Extradition is primarily a function of the executive branch, and the judiciary has no greater role than that mandated by the Constitution, or granted to the judiciary by Congress. *See Martin v. Warden, Atlanta Pen.*, 993 F.2d 824, 828-29 (11th Cir. 1993).

Accordingly, on appeal from the denial of habeas corpus in extradition proceedings, the scope of our review is quite limited. We consider only: (1) whether the judicial officer who conducted the extradition proceedings had jurisdiction; (2) whether the offense charged is extraditable under the terms of the treaty; and (3) whether there was sufficient evidence to support the finding of probable cause to extradite. *See Fernandez v. Phillips*, 268 U.S. 311, 312 (1925); *Ahmad v. Wigen*, 910 F.2d 1063, 1064 (2d Cir. 1990). Austin concedes that murder and conspiracy to murder are extraditable offenses under the treaty. Accordingly, we address only the magistrate's jurisdiction and the sufficiency of the evidence.

I. *Jurisdiction of the Extradition Magistrate*

Austin's primary argument on appeal is that the extradition magistrate lacked jurisdiction. In support of this position, Austin contends that: (1) Rule 9's automatic designation of magistrate judges to conduct extradition proceedings contravenes the relevant extradition statute, 18 U.S.C. § 3184; and (2) Rule 9's automatic designation violates Article III of the Constitution. Because he now believes that these too affect jurisdiction, he adds claims that: (3) the Marshal's complaint failed to adequately apprise Austin of the charges against him; and (4) there was no probable cause to support his provisional arrest.

At the outset, we emphasize that Austin raises his four "jurisdictional" arguments for the first time in this appeal, despite the general rule that "a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff*, 428 U.S. 106, 120 (1976). Because this

rule is one of prudence (and does not limit our jurisdiction), however, we retain considerable discretion to decide questions not raised initially in the district court. *See Lavoie v. Pacific Press & Shear Co.*, 975 F.2d 48, 56 (2d Cir. 1992).

We see no reason to depart from the general rule of forfeiture with respect to Austin's third argument that the complaint was inadequate and his fourth, that his provisional arrest was illegal. Although he stipples his briefs with references to "subject matter jurisdiction," neither claim affects the extradition court's jurisdiction, *see In re Adutt*, 55 F. 376, 379 (C.C. Ill. 1893) (defect in extradition complaint is "not a matter going to the jurisdiction of the [magistrate] to entertain the complaint"); *Sewell v. United States*, 406 F.2d 1289, 1292 (8th Cir. 1969) (challenge to arrest without probable cause was waivable defect going only to personal jurisdiction), which is conferred by section 3184 and Rule 9. *See In re Demjanjuk*, 603 F.Supp. 1468, 1469 (N.D. Ohio), *appeal dismissed*, 762 F.2d 1012 (6th Cir. 1985); *In re Extradition of Singh*, Nos. 87-6160G-01, 87-6161G-01, 1988 WL 151438 (D.N.J. Feb. 17, 1988). Accordingly, we decline to consider them at this late hour. *See Jhirad v. Ferrandina*, 536 F.2d 478, 486 (2d Cir.) ("Non-jurisdictional objections must, of course, be timely raised or they are waived."), *cert. denied*, 429 U.S. 833 (1976).

We distinguish, however, Austin's first and second contentions, his statutory and constitutional challenges. These claims raise purely legal issues, *see, e.g., Roosevelt v. E.I. Du Pont de Nemours & Co.*, 958 F.2d 416, 419 n.5 (D.C. Cir. 1992), the resolution of which may affect "the proper administration of judicial business." *Glidden Co. v. Zdanok*, 370 U.S. 530, 536 (1962) (plurality opinion). Moreover, because Austin's second claim, the constitutional argument, implicates the balance struck by our Constitution among the three branches of government, notions of forfeiture or waiver "cannot be dispositive."

*Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851 (1986). Accordingly, we will exercise our discretion to address these two questions, despite Austin's failure to raise them in the district court.

A. *Rule 9 and the Extradition Statute*

Austin argues that Rule 9's automatic relegation of extradition to a magistrate judge contravenes 18 U.S.C. § 3184. Section 3184 provides that magistrates may conduct extradition proceedings if "authorized so to do by a court of the United States." Austin reads this statutory langauge [3] to require a *specific* delegation of authority to a magistrate by a district judge for each extradition matter. Accordingly, Austin maintains, Rule 9's omnibus designation violates the statute. We find it incomprehensible that if a statute authorizes a court to delegate responsibility, it cannot do so as a corporate body (by rule) and must act only through individual judges on a case-by-case basis.

Austin directs our attention to the Federal Magistrates Act. Even though "extradition" is not expressly referred to in the Act, Austin posits that an extradition proceeding is a "hearing" authorized under section 636(b)(1)(B)

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[3] In relevant part, the statute reads:

> Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered.

18 U.S.C. § 3184.

of the Act. 28 U.S.C. § 636(b)(1)(B) (1988). That section, Austin continues, requires a special delegation of authority to a magistrate, and provides for *de novo* review by the district judge. We reject Austin's statutory argument for two reasons.

Section 3184 speaks of authorization by a "court." 28 U.S.C. § 636(b)(1)(B), by contrast, refers to designation by "a judge." Hence, on its face section 3184 does not support a requirement of special delegation. *See Ward v. Rutherford*, 921 F.2d 286 (D.C. Cir. 1990) (by its "plain meaning," similar D.C. local court rule provided the "authoriz[ation]" contemplated by section 3184), *cert. dismissed*, 111 S. Ct. 2844 (1991). *Cf. Grin v. Shine*, 187 U.S. 181, 186 (1902) ("we are not bound to import words into [section 3184] which are not found there").

Nor does the Federal Megistrates Act support Austin's argument. Section 636(a) of that Act expressly bestows upon magistrates "all powers and duties conferred or imposed upon United States commissioners." 28 U.S.C. § 636(a). And, prior to the Act, extradition proceedings were conducted by commissioners. *See* Pub. L. No. 90-578, § 301(a), 82 Stat. 1108 (1968) (substituting "magistrate" for "commissioner" in section 3184). Historically, it was never required that a commissioner be appointed in a particular extradition case, so long as he was appointed "in all cases of extradition." *In re Farez*, 8 Fed. Cas. 1007, 1008 (C.C.S.D.N.Y. 1870) (No. 4645). *See* 1 John Bassett Moore, *Moore on Extradition* 448-49 (1891). This is not without significance. We find nothing in the Federal Magistrates Act that changed this longstanding convention.

B. *Article III*

Austin's next argument plunges us into the "constitutional quandary" that is Article III. *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 112 (1982) (White, J., dissenting). Article III nourishes

two intersecting values in our constitutional system: first, it protects the institutional integrity of the judiciary by safeguarding its independence against encroachment by the political branches; second, it guarantees litigants the personal right to have their claims adjudicated by judges cloaked with that independence. *See Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 848 (1986) (citations omitted).

Austin believes that section 3184, as implemented by Rule 9, both (1) infringes upon the institutional integrity of the judiciary, and (2) violates his personal right to adjudication before an Article III judge. According to Austin, "[t]he Constitution requires that a United States citizen who could be denied his liberty through extradition to a foreign country have his case heard by a judge imbued with the independent judicial power guaranteed by Article III." We do not agree that either the judiciary's institutional rights, or Austin's personal rights, are jeopardized when magistrates conduct extradition proceedings at the direction of an Article III court.

1. *Institutional Interests*

We reject the notion that judicial independence is compromised when extradition hearings are conducted by magistrates authorized by rule of court. "Article III, § 1 safeguards the role of the Judicial Branch in our tripartite system by barring Congressional attempts 'to transfer jurisdiction [to non-Article III tribunals] for the purpose of emasculating constitutional courts,' and thereby preventing 'the encroachment or aggrandizement of one branch at the expense of the other.' " *Schor*, 478 U.S. at 850 (brackets in *Schor*) (citations omitted). At the same time, however, we will not read Article III to "unduly constrict Congress' ability to take needed and innovative action pursuant to its Article I powers." *Id.* at 851.

Accordingly, when we evaluate a congressional delegation of authority to a non-Article III officer, we eschew

"doctrinaire reliance on formal categories," *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 587 (1985), and instead, weigh a number of competing factors with the goal of preserving the values embodied in Article III:

> Among the factors upon which we have focused are the extent to which the "essential attributes of judicial power" are reserved to Article III courts, and conversely, the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts, the origins and importance of the right to be adjudicated, and the concerns that drove Congress to depart from the requirements of Article III.

*Schor*, 478 U.S. at 851. Upon consideration of these factors, we conclude that a general authorization to magistrates of the authority to conduct extradition hearings does not violate Article III.

Extradition magistrates do not exercise powers traditionally "reserved to Article III courts." To the contrary, the function performed by the judicial officer in certifying extraditability has not historically been considered an exercise of the "judicial power of the United States" at all. *See In re Extradition of Howard*, 996 F.2d 1320, 1325 (1st Cir. 1993) ("an officer who presides over such a proceeding is not exercising 'any part of the judicial power of the United States' ") (quoting *In re Kaine*, 55 U.S. (14 How.) 103, 119 (1852) (Curtis, J., concurring)); *Ward*, 921 F.2d at 288 n.2 ("Extradition, akin to a preliminary hearing, does not implicate 'the essential attributes of judicial power' and it certainly has not normally been vested *only* in Article III courts.") (emphasis in original); *Martin*, 993 F.2d at 828 ("An extradition proceeding is not an ordinary Article III case or controversy.").

The judicial officer conducting an extradition hearing is said to act in a "non-institutional capacity by virtue of

a 'special authority,' " *Howard*, 996 F.2d at 1325 (quoting *In re Metzger*, 46 U.S. (5 How.) 176, 191 (1847)), an authority that has been delegated to the judiciary by Congress in section 3184. *See Martin*, 993 F.2d at 828. The function of the judicial officer is simply to certify extraditability to the Secretary of State, who holds the ultimate power to extradite at his discretion. *See United States v. Doherty*, 786 F.2d 491, 499 n.10 (2d Cir. 1986). Indeed, as Judge Friendly explained in *In re Mackin*, 668 F.2d 122, 125-30 (2d Cir. 1981), orders certifying extraditability are non-appealable precisely because they do not emanate from constitutional courts.

Neither do we consider the "origins and importance" of extradition hearings to weigh in Austin's favor. We have repeatedly noted, for example, that an extradition hearing is not a criminal prosecution: the order of extraditability expresses no judgment on Austin's guilt or innocence. *See, e.g., Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981); *Simmons v. Braun*, 627 F.2d 635, 636 (2d Cir. 1980); *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir.), *cert. denied*, 429 U.S. 833 (1976). Rather, an extradition hearing is "of the character of those preliminary examinations which take place every day in this country before an examining or committing magistrate for the purpose of determining whether a case is made out which will justify the holding of the accused . . . to ultimately answer to an indictment, or other proceeding, in which he shall be finally tried upon the charge made against him." *Benson v. McMahon*, 127 U.S. 457, 463 (1888).

Finally, a brief review of the "concerns that drove Congress" in 1848 to grant judges and magistrates (then commissioners) their current role in the extradition process demonstrates that Congress reacted, in part, to "the public clamor for judicial involvement in the extradition process." Jacques Semmelman, *Federal Courts, The Constitution, and the Role of Non-Inquiry in International Extradition Proceedings*, 76 Cornell L. Rev. 1198, 1208 (1991). *See generally* 1 M. Cherif Bassiouni, *Interna-*

*tional Extradition* 51 (2d rev. ed. 1987) ("The 1848 Act was designed to limit executive power. . . . The underlying theory was that the judiciary should have the authority to review executive action so that fundamental individual liberty would not be improperly infringed."); *Mackin*, 668 F.2d at 134-35 (in which Judge Friendly chronicles how executive abuse of its nearly absolute discretion in extradition matters led Congress in 1848 to enact what is now section 3184). Thus, by section 3184, Congress interposed the judiciary between the executive and the individual.

The procedures challenged here adequately safeguard the integrity of the judicial branch. Magistrates are appointed and are subject to removal by Article III courts. 28 U.S.C. § 631(a) & (i) (1988). Section 3184 permits extradition proceedings by magistrates *only* after an Article III court has authorized them. 18 U.S.C. § 3184. Finally, and most significantly, Rule 9 was promulgated by Article III judges. Because the authority to designate magistrates to hear extradition matters remains exclusively *within* the judiciary, we see no potential for trespass by the executive: "Thus, the only conceivable danger of a 'threat' to the 'independence' of the magistrate comes from within, rather than without the judicial department." *United States v. Raddatz*, 447 U.S. 667, 685 (1980) (Blackmun, J., concurring).

2. *Personal Rights*

We also reject Austin's claim that his personal rights under Article III were violated. Although the contours of such a right are vague, it has been described as the "right to have claims decided by judges who are free from potential domination by other branches of government." *United States v. Will*, 449 U.S. 200, 218 (1980). Article III does not, however, "confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court." *Schor*, 478 U.S. at 848. *See Palmore v. United States*, 411 U.S. 389, 407 (1973).

As our discussion makes clear, section 3184, coupled with Rule 9's authorization procedure, does not leave room for unwelcome intrusion by the political branches into the extradition process. Although we agree that "extradition without an unbiased hearing before an independent judiciary [is] highly dangerous to liberty," *In re Kaine*, 55 U.S. (14 How.) 103, 112 (1852), embracing this sentiment does not require that we demand further safeguards to individual liberty than those already chosen by Congress and the judges of the Eastern District. *See* Samuel T. Spear, *The Law of Extradition* 270 (3rd ed. 1885).

In sum, we hold that Article III is not violated when a magistrate conducts extradition proceedings pursuant to Rule 9. *Accord Ward v. Rutherford*, 921 F.2d 286, 289 (D.C. Cir. 1990) (Article III not offended by section 3184 or local rule authorizing magistrates to conduct extradition proceedings).

## II. *Sufficiency of the Evidence*

Finally, Austin renews the argument made to the district court (and properly preserved) that the evidence presented at his extradition hearing did not warrant the finding of extraditability. Austin argues that the evidence relied upon by the extradition magistrate was neither "reliable" nor "credible." He also faults the district court for failing to scrutinize the extradition magistrate's determination in this regard. Finally, Austin argues that the evidence was insufficient to support probable cause to believe that Austin was guilty of murder and conspiracy to murder. We find no merit to these contentions.[4]

Austin's challenge to the reliability and credibility of the evidence is misdirected. "The credibility of witnesses

[4] Austin also argues that documentary evidence was improperly admitted against him under the relevant statute. 28 U.S.C. § 3190. Because this non-jurisdictional argument is made for the first time on appeal, we decline to consider it. *See Jhirad*, 536 F.2d at 486.

and the weight to be accorded their testimony is solely within the province of the extraditing magistrate." *Quinn v. Robinson*, 783 F.2d 776, 815 (9th Cir.), *cert. denied*, 479 U.S. 882 (1986). It is clear to us from the record of the proceedings, moreover, that the extradition magistrate did in fact make such a determination: "[W]hile those affidavits contain hearsay, there's a level of consistency among those affidavits that comes from several different quarters that the Court believes renders that information reliable." Transcript of Magistrate's Decision at 5. Habeas review in the district court is not an occasion to review such a determination. *See Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981) ("The scope of [habeas] review is limited and should not be converted into a de novo review of the evidence.").

Nor are we persuaded that the evidence was insufficient to support probable cause to extradite. No doubt, the evidence tying Austin to the shooting of Wilson is circumstantial, and less than overwhelming. However, the foreign government is not required to present its entire case in this country. *See Quinn*, 783 F.2d at 815. The evidence presented need only "support a reasonable belief that [Austin] was guilty of the crime[s] charged." *Ahmad*, 910 F.2d at 1066. We agree with the district court that the evidence presented to the magistrate sufficed for this limited purpose.

## CONCLUSION

Accordingly, the judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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93 CV 910

MICHAEL AUSTIN,

—against— *Petitioner,*

CHARLES E. HEALEY, United States Marshal
for the Eastern District of New York,
*Respondent.*

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*CORRECTED MEMORANDUM AND ORDER*

[Filed Apr. 20, 1993]

Korman, J.

Petitioner Michael Austin seeks a writ of habeas corpus to challenge his extradition to Great Britain in connection with the murder of David Wilson. Petitioner argues that the admission of multiple layers of hearsay during the determination of probable cause at the extradition hearing held before Magistrate Carter was contrary to the Due Process Clause and the terms of the extradition treaty with the United Kingdom. Petitioner also attacks the finding of probable cause, arguing that the evidence was insufficient with or without the challenged hearsay statements. In addition, petitioner argues that Magistrate Carter's denial of certain discovery sought by petitioner that would have "vitiated the probable cause determination" also violated the Due Process Clause. As set out below, none of these claims provides a basis for the relief petitioner seeks.

The British Treaty

Petitioner argues that portions of the statements of four witnesses recounting threats by Austin against Wilson

admitted in the extradition hearing were not competent evidence under the terms of the extradition treaty with the United Kingdom because they contained multiple layers of hearsay.

The Federal Rules of Evidence, which petitioner contends would bar the testimony at issue here, do not apply in extradition proceedings. Fed. R. Evid. 1101(d)(3). There is no blanket prohibition against the presentation of hearsay evidence in an extradition hearing. *Collins v. Loisel*, 259 U.S. 309, 317 (1922). Rather, the weight to be given hearsay evidence, provided it otherwise meets the requirements for admissibility, is committed to the discretion of the reviewing magistrate. *Quinn v. Robinson*, 783 F.2d 776, 815 (9th Cir.), *cert. denied*, 479 U.S. 882 (1986); *Melia v. United States*, 667 F.2d 300, 302 (2d Cir. 1981).[1]

This is only logical; the elimination of "hearsay from extradition proceedings would run counter to one of the primary objectives of bilateral extradition treaties, namely, 'to obviate the necessity of confronting the accused with the witnesses against him . . . [requiring] the demanding government to send its citizens to another country to institute legal proceedings would defeat the whole object of the treaty.'" *Zanazanian v. United States*, 729 F.2d 624, 626-27 (9th Cir. 1984), *citing Sakaguchi v. Kaulukukui*, 520 F.2d 726, 728 (9th Cir. 1975). *See also Melia v. United States*, 667 F.2d at 302 ("an extradition hearing

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[1] 18 U.S.C. § 3190, the statute governing evidence in an extradition hearing, states that:

> "Depositions . . . shall be received . . . if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that [they] are authenticated in the manner required."

Petitioner does not dispute in this proceeding that the affidavits admitted into evidence at the extradition hearing before the Magistrate met the requirements for admission set out in § 3190.

is not the occasion for an adjudication of guilt or innocence. Rather, its purpose is to determine whether there is reasonable ground to believe that the person whose extradition is sought is guilty, that is, whether there is sufficient evidence to justify extradition under the appropriate treaty") (citations omitted).

The terms of the extradition treaty currently in force between the United Kingdom and the United States do not prohibit the introduction of hearsay—or, for that matter, multiple hearsay—statements in an extradition hearing. Article VII, Paragraph 5 of that treaty states in relevant part that:

> "any deposition or statement or other evidence given on oath or affirmed . . . shall be received in evidence in any proceedings for extradition:
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> (a) if it is authenticated . . . by being certified by a judge, magistrate or other competent authority of the requesting party. . .; and
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> (b) where the requesting Party is the United Kingdom, by being sealed with the official seal of the appropriate Minister and certified by the principal diplomatic or consular officer of the United States of America in the United Kingdom. . . ."

United States-United Kingdom Extradition Treaty, January 1, 1977, 28 U.S.T. 227.

While the extradition treaty stipulates that statements admitted into evidence be sworn, the treaty does not import a requirement that evidentiary materials meet the standards of the Federal Rules of Evidence relating to the exclusion of hearsay. Treaty extradition obligations are contractual and should be construed liberally in the interests of comity. *Factor v. Laubenheimer,* 290 U.S. 276, 293-94 (1933); *United States ex rel. Sakaguchi v. Kaulukukui,* 520 F.2d at 731. The treaty states that the witness statements should be "given under oath," and

not that such statements meet the requirements for admissibility at trial in a United States court. In fact, as recognized by petitioner in his papers submitted in the present proceeding, sworn affidavits, expressly permitted under the terms of the treaty, are themselves hearsay. There is thus no convincing way to connect the "oath" requirement in the treaty with a bar against hearsay testimony in the extradition proceeding.

Moreover, "oath" clauses in extradition treaties, including the ones in the current treaty with the United Kingdom and its predecessor, have not been interpreted as prohibiting either hearsay or "double hearsay" testimony. *See, e.g., Emami v. United States District Court for the Northern District of California,* 834 F.2d 1444, 1451 (9th Cir. 1987) (requirement in treaty with Germany that statements be under oath did not preclude admission of hearsay statements in sworn affidavit); *Quinn v. Robinson,* 783 F.2d 776, 815 (9th Cir. 1986) (treaty with United Kingdom did not preclude admissibility of double hearsay identification of police officer). Indeed, in *Collins v. Loisel, supra,* which dealt with the predecessor treaty with Great Britain, the Supreme Court held that the unsworn statements of absent witnesses could be acted upon by the committing magistrate—even though that treaty, like the present one, contained a requirement that statements admitted in extradition hearings be under oath. 259 U.S. at 317.

Magistrate Carter treated the testimony at issue here in the appropriate manner. He stated at the hearing that he would "examine each out of court statement and layer of out of court statement to determine whether or not there are any indicia of reliability that have been recognized." Based on his review of those statements, Magistrate Carter concluded that "while the affidavits contain hearsay, there's a level of consistency among those affidavits that come from several different quarters that the Court believes renders that information reliable."

Petitioner nonetheless takes the position that Magistrate Carter should have excluded the evidence at issue outright. According to petitioner, the treaty permits one level of sworn hearsay, but no more. He bases his argument on *United States v. Zanazanian*, 729 F.2d 624 (9th Cir. 1984), as well as on the history and purposes of the hearsay rule. However, not only does *Zanazanian* permit the introduction of "double hearsay" (in that case in the form of unsworn police reports relating to statements of unsworn suspects made to police implicating the petitioner), which the Court of Appeals there found to be reliable, but the challenged statements in the present case may fall within exceptions to the hearsay rule. And, although the *Zanazanian* court contrasted the Swedish treaty at issue there—which does not require that witness statements be sworn—with the British treaty, which does, the Court of Appeals for the Ninth Circuit did so in the context of a discussion of treaty admissibility requirements, not of the standards for determining the competence or reliability of particular evidence. Indeed, that same court has also held that a double hearsay identification of a photograph was admissible and competent evidence in an extradition hearing under the British treaty. *Quinn v. Robinson*, 783 F.2d at 815.

Petitioner also attempts to connect a bar against "multiple" hearsay contained in affidavits during an extradition hearing with the oath requirement in the treaty by citing the history and purposes of the hearsay rule. *See* Petitioner's Memorandum of Law at 21-22. This argument, too, is flawed. The Fourth Amendment provides that "no warrant shall issue, but upon probable cause, supported by oath or affirmation." Nevertheless, hearsay within hearsay may be included in affidavits considered in determining the existence of probable cause. *See, e.g., United States v. Wylie*, 705 F.2d 1388, 1390 (4th Cir. 1983); *United States v. Wilson*, 479 F.2d 936, 941 (7th Cir. 1973); *United States v. McCoy*, 478 F.2d 176, 179 (10th Cir.) ("[a]s concerns so called double hearsay . . .

when a magistrate receives an affidavit which contains hearsay on hearsay, he need not summarily reject this double hearsay information, but is rather called on to evaluate such information as well as all other information in the affidavit in order to determine whether the informant gathered his information in a reliable way and from reliable sources"), *cert. denied,* 414 U.S. 828 (1973).

Such hearsay may be considered because, as suggested by the quotation selected by petitioner, the policy underlying the rule that issues should not be "tried other than by oath," *see United States v. Costello,* 221 F.2d 668, 678 (2d Cir. 1955), is directed primarily to the reliability of testimony at trial, and the right to confront and cross-examine witnesses there. The same concerns do not attach with equal force to a probable cause determination in an extradition hearing, where the issue is not whether an individual may be held answerable for a crime, but rather whether he or she may be held for trial, and there is no right to confront or cross-examine witnesses. Instead, the standards for the admissibility and consideration of evidence are similar to "those applicable in preliminary examinations which take place every day in this country for the purpose of determining whether a case is made out which will justify the holding of the accused." *Benson v. McMahon,* 127 U.S. 457, 463 (1888); *Sidona v. Grant,* 619 F.2d 167, 175 (2d Cir. 1980).

> That standard—probable cause to believe the suspect has committed a crime—traditionally has been decided by a magistrate in a non-adversary proceeding on hearsay and written testimony. . . The use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself. It does not require the fine resolution of conflicting evidence that a reasonable doubt or even a

> preponderance standard demands, and credibility determinations are seldom critical in deciding whether the evidence supports a reasonable belief in guilt.

*Gerstein v. Pugh*, 420 U.S. 103, 121 (1975). *See Simmons v. Braun*, 627 F.2d 635, 636 (2d Cir. 1980). Accordingly, the critical issue before the Magistrate was whether the evidence before him was sufficient to establish probable cause that petitioner committed the crime for which the United Kingdom seeks to extradite him.

The Magistrate's Determination of Probable Cause

Petitioner also argues that the circumstantial evidence presented by the government provided insufficient grounds for the determination of probable cause. In particular, petitioner focuses on the Magistrate's alleged failure to consider all the other people who had a motive to kill Wilson and the "triple and quadruple" hearsay statements in the record.[2] In addition, petitioner argues that certain statements relating to threats against Wilson and the retention of a private investigator by Austin under the name "McMillan" to locate Wilson and provide surveillance photographs of him were intrinsically unreliable and lacked probative value.[3]

The scope of review of an extradition determination in a habeas corpus proceeding is limited. That review is confined to:

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[2] These statements are characterized by petitioner as triple or quadruple hearsay because petitioner counts the underlying, sworn statement of the affiant as hearsay.

[3] Petitioner also offers arguments relating to the supposedly "illogical" way the crime was committed, if it was Austin who committed it, since Wilson's daughter, who could also possibly have identified Austin, was present at Wilson's house at the time of the murder and was not herself killed. (This amounts to an argument that if Austin really knew what he was doing, he would have arranged to have two people killed rather than one—hardly a compelling theory).

> whether the judge who conducted the extradition hearing had jurisdiction to do so, whether the extradition court had jurisdiction, whether the alleged offense was covered by an extradition treaty, and whether the extradition judge was presented with evidence which warranted a finding that there was reasonable ground to believe that the accused was guilty.

*Melia v. United States*, 667 F.2d at 302; *Ahmad v. Wigen*, 910 F.2d 1063, 1064-65 (2d Cir. 1990). To establish the basis for extradition under 18 U.S.C. § 3184, evidence must be produced that is "sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt." *In re Atta*, 706 F. Supp. 1032, 1050 (E.D.N.Y. 1989), *aff'd sub nom Ahmad v. Wigen*, 910 F.2d 1063, 1066 ("[i]f the evidence would support a reasonable belief that Ahmad was guilty of the crime charged, it sufficed").[4]

The record of the extradition proceeding was made before Magistrate Carter. No new evidence was presented in this habeas corpus proceeding. Magistrate Carter's assessment of the evidence is set out at pp. 2-7 of the Transcript of Criminal Cause for Extradition Hearing held on January 29, 1993. I agree with him that the evidence

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[4] 18 U.S.C. § 3184 sets out the requirements for extradition:

> Whenever there is a treaty . . . for extradition . . . any . . . magistrate authorized so to do by a court of the United States . . . may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such . . . magistrate, to the end that the evidence of criminality may be heard and considered . . . If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same. . . .

presented during the proceeding provided a sufficient basis to order petitioner's extradition. In addition to the evidence of threats against David Wilson made by petitioner (including evidence the admissibility of which petitioner does not challenge), and evidence indicating that Austin knew Wilson was cooperating with the police, there is substantial evidence that links petitioner to the surveillance of David Wilson and his home conducted in the time period immediately preceding the murder.

Specifically, the affidavits relating to the surveillance during the days before the murder submitted by the government at the extradition hearing indicate that Austin contacted Peter Meese, a commodities broker, on February 20, 1992 and asked him to locate a private detective to trace Wilson. He told Meese to tell the detective to expect a telephone call from an American named "McMillan." Meese did so, contacting a detective named John Henry Nunn, and informing Austin. Austin later contacted Meese again and told him that he had found Wilson already, but had contacted Nunn and spoken with him anyway. Peter Meese Affidavit at pp. 219-222. According to Nunn, a person with an American accent calling himself "McMillan" contacted Nunn and spoke with him twice. John Henry Nunn Affidavit at pp. 260-261.

On February 24, 1992, June Hellewell, another private investigator, received a telephone call from a person identifying himself as "McMillan." "McMillan" provided Hellewel with Wilson's telephone and fax numbers and asked her to trace his address and to have someone take an associate to Wilson's residence. Hellewell found Wilson's address for "McMillan," and subcontracted the work of showing and photographing the residence to another private investigator, Paul La-Vey. June Hellewell Affidavit at pp. 262-266. "McMillan" contacted La-Vey and asked him to photograph the residence and take his associate "Paul Harris" to see it. On March 1, 1992, at "McMillan's" request, La-Vey photographed Wilson's resi-

dence. At the request of McMillan's "associate," who identified himself as "Paul Harris," he faxed the directions to Wilson's house to the fax number 0101 212 7503973. Paul La-Vey Affidavit at pp. 268-275; Hellewell Affidavit at p. 266; Exhibits 19, 23. Documentary and affidavit evidence indicates that this fax number, located in New York City, was used by Austin. Meese Affidavit at p. 219; Joseph Martin Worden Affidavit at pp. 534-537; Trevor Taylor Affidavit at pp. 549-550; Exhibits 35, 39, 44. La-Vey described "McMillan" as having an American accent, and his associate "Paul Harris" as having an English accent. La-Vey Affidavit at pp. 288-289.

"McMillan" again contacted La-Vey on March 1 and March 4 and asked for further photographs of Wilson and his residence. La-Vey Affidavit at pp. 275-278. La-Vey replied that he would do so, but that he required further payment. La-Vey did not hear from "McMillan" again. *Id.* at p. 288. Wilson was murdered on March 5.

The evidence introduced by the government is sufficient to support the finding of probable cause. The arguments raised by petitioner are more appropriately addressed at trial than during the habeas review of the determination of probable cause in an extradition hearing.

The Additional "Exculpatory" Discovery Sought by Petitioner

Petitioner claims that the failure of the government to turn over certain exculpatory materials amounted to a denial of due process. Specifically, petitioner seeks "all exculpatory evidence . . . including . . . any evidence indicating that individuals other than Hector Portillo may have had a motive to murder David Wilson or may have threatened Wilson, directly or indirectly." [5]

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[5] "Hector Moretta Portillo" was a pseudonym used by petitioner. For the purposes of this proceeding, petitioner Michael Austin does not contest that he used the name Hector Portillo. Petitioner's Memorandum of Law at 4, n.2.

Evidence presented by the party opposing extradition is admitted solely for the purpose of explaining, if possible, the evidence that has been presented to support the showing of probable cause. *Collins v. Loisel*, 259 U.S. at 316-17. A party against whom extradition is sought is not entitled as a matter of right to *Brady* materials, because *Brady* has no application in international extradition proceedings. *Merino v. United States Marshal*, 326 F.2d 5, 13 (9th Cir. 1963), *cert. denied*, 377 U.S. 872 (1964). Accordingly, the extent of discovery allowed in an extradition proceeding lies within the sound discretion of the Magistrate Judge. *Quinn v. Robinson*, 783 F.2d at 817 n.41.

The materials sought by petitioner were the subject of a previous motion by the petitioner to compel, resulting in a direction by the court that United States Attorney inquire of Great Britain whether there was any information concerning specific threats or any other type of conduct by anyone other than Austin that would indicate an intention to do David Wilson harm. The British prosecutor replied that he had no such information regarding any threats or specific acts directed against Wilson or the Wilson family, and that certain reports in the press, including one with respect to which the court requested information, were "wildly inaccurate."

Petitioner appears to have received substantially what he sought. Moreover, any materials not discovered would not have been admissible in the extradition hearing unless they were "explanatory" of the evidence presented by the United States Attorney. The failure to conduct an exhaustive investigation of all possible exculpatory information at petitioner's request and to turn such information over to petitioner does not entitle him to habeas corpus relief. *Cf. United States v. Williams*, —— U.S. ——, 112 S.Ct. 1735, 1744-45 (1992).

Petitioner's request for a writ of habeas corpus is therefore denied.

SO ORDERED

/s/ Edward R. Korman
EDWARD R. KORMAN
United States District Judge

Dated: Brooklyn, New York
April 19, 1993

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 5th day of November one thousand nine hundred and ninety three.

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Docket Number: 93-2308

MICHAEL AUSTIN,
*Petitioner-Appellant,*

v.

CHARLES HEALEY, United States Marshal
for the Eastern District of New York,
*Respondent-Appellee.*

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A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by petitioner-appellant, pro se, Michael Austin.

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard

the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT,
ELAINE B. GOLDSMITH,
Clerk

By: /s/ Carolyn Clark Campbell
CAROLYN CLARK CAMPBELL
Chief Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Docket No. 92-0695M

IN THE MATTER OF THE EXTRADITION
OF MICHAEL AUSTIN, also known as
"Colonel Hector Moretta Portillo"

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## CERTIFICATION AND ORDER OF EXTRADITABILITY

Having held an extradition hearing on January 26, 1993, and after considering the evidence, the Memoranda of both counsel and the arguments of both counsel, this court finds and certifies to the Secretary of State as follows:

1. This court has jurisdiction to conduct extradition proceedings pursuant to Title 18, United States Code, Section 3184.

2. There is an Extradition Treaty between the United States of America and the United Kingdom, entered into force on January 21, 1977, Title 28, United States Code, Section 227; TIAS 8468. This Treaty was in full force and effect at all times relevant to this extradition matter.

3. This court has jurisdiction over MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo."

4. MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo," has been charged in the United Kingdom with the murder of and conspiracy to murder David Wilson, which murder occurred on or about March 5, 1992.

5. The above-specified crimes, alleged to have been committed in the United Kingdom, are enumerated within said Treaty.

6. The "Hector Portillo" sought by the United Kingdom and the person brought before this court, who has given his name as MICHAEL AUSTIN, are one and the same person.

7. There is probable cause to believe that MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo" has committed the crimes charged.

8. The evidence before this court is sufficient to justify the committal of MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo," for trial, on felony charges of murder and conspiracy to murder, had the offense with which he is accused been committed in any state within the United States.

9. The requirement of "double criminality" has been satisfied.

10. The pertinent text and statute of limitations for the crimes with which MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo," has been charged are set forth in the documents prepared by the United Kingdom.

THEREFORE, I certify that I have found MICHAEL AUSTIN, also known as "Colonel Hector Moretta Portillo," extraditable to the United Kingdom, and by prior warrant have committed him to the custody of the United States Marshal for the Eastern District of New York pending the issuance of an Extradition Warrant by the United States Secretary of State.

I further order that this Certificate of Extraditability and Order of Commitment, together with a copy of all evidence presented in this case, including the formal extradition documents received in evidence, be forwarded to the Secretary of State by the Clerk of this Court.

Date: January 29, 1993
Brooklyn, New York

/s/ Zachary W. Carter
ZACHARY W. CARTER
United States Magistrate Judge
Eastern District of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 21st day of September, one thousand nine hundred and ninety-three.

PRESENT: HON. J. DANIEL MAHONEY,
HON. JOSEPH M. MCLAUGHLIN,
HON. DENNIS G. JACOBS,
*Circuit Judges.*

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93-2308

MICHAEL AUSTIN,
*Petitioner-Appellant,*

-v.-

CHARLES HEALEY, United States Marshal
for the Eastern District of New York,
*Respondent-Appellee.*

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Appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ORDERED, ADJUDGED and DECREED that the judgment of the district court be and it hereby is affirmed in accordance with the opinion of this court.

ELAINE B. GOLDSMITH
Clerk

By: /s/ Edward J. Guardaro
EDWARD J. GUARDARO
Staff Attorney

Dated: November 18, 1993

## CONSTITUTIONAL, TREATY, STATUTORY AND RULE PROVISIONS INVOLVED

### UNITED STATES CONSTITUTION

### ARTICLE III.

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

* * *

## AMENDMENT IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## AMENDMENT V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

# EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

28 U.S.T. 229; T.I.A.S. No. 8468

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland:

Desiring to make provision for the reciprocal extradition of offenders:

Have agreed as follows:

## ARTICLE I

Each Contracting Party undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person found in its territory who has been accused or convicted of any offense within Article III, committed within the jurisdiction of the other Party.

## ARTICLE II

(1) This Treaty shall apply:

(*a*) in relation to the United Kingdom: to Great Britain and Northern Ireland, the Channel Islands, the Isle of Man, and any territory for the international relations of which the United Kingdom is responsible and to which the Treaty shall have been extended by agreement between the Contracting Parties embodied in an Exchange of Notes; and

(*b*) to the United States of America;

and references to the territory of a Contracting Party shall be construed accordingly.

(2) The application of this Treaty to any territory in respect of which extension has been made in accordance with paragraph (1) of this Article may be terminated by

either Contracting Party giving six months' written notice to the other through the diplomatic channel.

## ARTICLE III

(1) Extradition shall be granted for an act or omission the facts of which disclose an offense within any of the descriptions listed in the Schedule annexed to this Treaty, which is an integral part of the Treaty, or any other offense, if:

(*a*) the offense is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year or by the death penalty;

(*b*) the offense is extraditable under the relevant law, being the law of the United Kingdom or other territory to which this Treaty applies by virtue of sub-paragraphs (1)(*a*) of Article II; and

(*c*) the offense constitutes a felony under the law of the United States of America.

(2) Extradition shall also be granted for any attempt or conspiracy to commit an offense within paragraph (1) of this Article if such attempt or conspiracy is one for which extradition may be granted under the laws of both Parties and is punishable under the laws of both Parties by imprisonment or other form of detention for more than one year or by the death penalty.

(3) Extradition shall also be granted for the offense of impeding the arrest or prosecution of a person who has committed an offense for which extradition may be granted under this Article and which is punishable under the laws of both Parties by imprisonment or other form of detention for a period of five years or more.

(4) A person convicted of and sentenced for an offense shall not be extradited therefor unless he was sentenced to imprisonment or other form of detention for a

period of four months or more, or, subject to the provisions of Article IV, to the death penalty.

## ARTICLE IV

If the offense for which extradition is requested is punishable by death under the relevant law of the requesting Party, but the relevant law of the requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting Party gives assurances satisfactory to the requested Party that the death penalty will not be carried out.

## ARTICLE V

(1) Extradition shall not be granted if:

(*a*) the person sought would, if proceeded against in the territory of the requested Party for the offense for which his extradition is requested, be entitled to be discharged on the grounds of a previous acquittal or conviction in the territory of the requesting or requested Party or of a third State; or

(*b*) the prosecution for the offense for which extradition is requested has become barred by lapse of time according to the law of the requesting or requested Party; or

(*c*) (i) the offense for which extradition is requested is regarded by the requested Party as one of a political character; or

(ii) the person sought proves that the request for his extradition has in fact been made with a view to try or punish him for an offense of a political character.

(2) Extradition may be refused on any other ground which is specified by the law of the requested Party.

## ARTICLE VI

If the person sought should be under examination or under punishment in the territory of the requested Party for any other offense, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

## ARTICLE VII

(1) The request for extradition shall be made through the diplomatic channel, except as otherwise provided in Article XV.

(2) The request shall be accompanied by:

(*a*) a description of the person sought, his nationality, if known, and any other information which would help to establish his identity;

(*b*) a statement of the facts of the offense for which extradition is requested;

(*c*) the text, if any, of the law

(i) defining that offense;

(ii) prescribing the maximum punishment for that offense; and

(iii) imposing any time limit on the institution of proceedings for that offense;

and

(*d*) (i) where the requesting Party is the United Kingdom, a statement of the legal provisions which establish the extraditable character of the offense for which extradition is requested under the relevant law, being the law of the United Kingdom or other territory to which this Treaty applies by virtue of sub-paragraph (1)(*a*) of Article II;

(ii) where the requesting Party is the United States of America, a statement that the of-

fense for which extradition is requested, constitutes a felony under the law of the United States of America.

(3) If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the requesting Party and by such evidence as, according to the law of the requested Party, would justify his committal for trial if the offense had been committed in the territory of the requested Party, including evidence that the person requested is the person to whom the warrant of arrest refers.

(4) If the request relates to a convicted person, it must be accompanied by a certificate or the judgment of conviction imposed in the territory of the requesting Party and by evidence that the person requested is the person to whom the conviction refers and, if the person was sentenced, by evidence of the sentence imposed and a statement showing to what extent the sentence has not been carried out.

(5) The warrant of arrest, or the judicial document establishing the existence of the conviction, and any deposition or statement or other evidence given on oath or affirmed, or any certified copy thereof shall be received in evidence in any proceedings for extradition:

(*a*) if it is authenticated in the case of a warrant by being signed, or in the case of any other original document by being certified, by a judge, magistrate or other competent authority of the requesting Party; or in the case of a copy by being so certified to be a true copy of the original; and

(*b*) where the requesting Party is the United Kingdom, by being sealed with the official seal of the appropriate Minister and certified by the principal diplomatic or consular officer of the United States of America in the United Kingdom; and where the

requesting Party is the United States of America, by being sealed with the official seal of the Department of State for the Secretary of State; or

(*c*) if it is authenticated in such other manner as may be permitted by the law of the requested Party.

## ARTICLE VIII

(1) In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on application through the diplomatic channel by the competent authorities of the requesting Party. The application shall contain an indication of intention to request the extradition of the person sought and a statement of the existence of a warrant of arrest or a conviction against that person, and, if available, a description of the person sought, and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offense been committed, or the person sought been convicted, in the territory of the requested Party.

(2) A person arrested upon such an application shall be set at liberty upon the expiration of forty-five days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.

## ARTICLE IX

(1) Extradition shall be granted only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offense of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.

(2) If the requested Party requires additional evidence or information to enable a decision to be taken on the request for extradition, such evidence or information shall be submitted within such time as that Party shall require.

## ARTICLE X

If the extradition of a person is requested concurrently by one of the Contracting Parties and by another State or States, either for the same offense or for different offenses, the requested Party shall make its decision in so far as its law allows, having regard to all the circumstances, including the provisions in this regard in any Agreements in force between the requested Party and the requesting States, the relative seriousness and place of commission of the offenses, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent extradition to another State.

## ARTICLE XI

(1) The requested Party shall promptly communicate to the requesting Party through the diplomatic channel the decision on the request for extradition.

(2) If a warrant or order for the extradition of a person sought has been issued by the competent authority and he is not removed from the territory of the requested Party within such time as may be required under the law of that Party, he may be set at liberty and the requested Party may subsequently refuse to extradite him for the same offense.

## ARTICLE XII

(1) A person extradited shall not be detained or proceeded against in the territory of the requesting Party for any offense other than an extraditable offense established by the facts in respect of which his extradition has been granted, or on account of any other matters, nor be extradited by that Party to a third State—

(*a*) until after he has returned to the territory of the requested Party; or

(*b*) until the expiration of thirty days after he has been free to return to the territory of the requested Party.

(2) The provisions of paragraph (1) of this Article shall not apply to offenses committed, or matters arising, after the extradition.

## ARTICLE XIII

When a request for extradition is granted, the requested Party shall, so far as its law allows and subject to such conditions as it may impose having regard to the rights of other claimants, furnish the requesting Party with all sums of money and other articles—

(*a*) which may serve as proof of the offense to which the request relates; or

(*b*) which may have been acquired by the person sought as a result of the offense and are in his possession.

## ARTICLE XIV

(1) The requested Party shall make all necessary arrangements for and meet the cost of the representation of the requesting Party in any proceedings arising out of a request for extradition.

(2) Expenses relating to the transportation of a person sought shall be paid by the requesting Party. No pecuniary claim arising out of the arrest, detention, examination and surrender of a person sought under the provisions of this Treaty shall be made by the requested Party against the requesting Party.

## ARTICLE XV

A request on the part of the Government of the United States of America for the extradition of an offender who

is found in any of the territories to which this Treaty has been extended in accordance with paragraph (1) of Article II may be made to the Governor or other competent authority of that territory, who may take the decision himself or refer the matter to the Government of the United Kingdom for their decision.

## ARTICLE XVI

(1) This Treaty shall be ratified, and the instruments of ratification shall be exchanged at Washington as soon as possible. It shall come into force three months after the date of the exchange of instruments of ratification.[1]

(2) This Treaty shall apply to any offense listed in the annexed Schedule committed before or after this Treaty enters into force, provided that extradition shall not be granted for an offense committed before this Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

(3) On the entry into force of this Treaty the provisions of the Extradition Treaty of December 22, 1931[2] shall cease to have effect as between the United Kingdom and the United States of America.

(4) Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other through the diplomatic channel. In that event the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in duplicate at London in the English language this 8th day of June, 1972.

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[1] Jan. 21, 1977.

[2] TS 849: 47 Stat. 2122.

For the Government of the United States of America:

/s/ W. H. Annenberg [3]

For the Government of the United Kingdom of Great Britain and Northern Ireland:

/s/ Anthony Kershaw [4]

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[3] W. H. Annenberg.

[4] Anthony Kershaw.

# SUPPLEMENTARY TREATY CONCERNING THE EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, SIGNED AT LONDON ON 8 JUNE 1972

Reprinted in *International Judicial Assistance*
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The Government of the United States of America and the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desiring to make more effective the Extradition Treaty between the Contracting Parties, signed at London on 8 June 1972 (hereinafter referred to as "the Extradition Treaty");

Have resolved to conclude a Supplementary Treaty and have agreed as follows:

## ARTICLE 1

For the purposes of the Extradition Treaty, none of the following shall be regarded as an offense of a political character:

(a) an offense for which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his case to their competent authorities for decision as to prosecution;

(b) murder, voluntary manslaughter, and assault causing grievous bodily harm;

(c) kidnapping, abduction, or serious unlawful detention, including taking a hostage;

(d) an offense involving the use of a bomb, grenade, rocket, firearm, letter or parcel bomb, or any incendiary device if this use endangers any person;

(e) an attempt to commit any of the foregoing offense or participation as an accomplice of a person who commits or attempts to commit such an offense.

## ARTICLE 2

Nothing in this Supplementary Treaty shall be interpreted as imposing the obligation to extradite if the judicial authority of the requested Party determines that the evidence of criminality presented is not sufficient to sustain the charge under the provisions of the treaty. The evidence of criminality must be such as, according to the law of the requested Party, would justify committal for trial if the offense had been committed in the territory of the requested Party.

In determining whether an individual is extraditable from the United States, the judicial authority of the United States shall permit the individual sought to present evidence on the questions of whether:

(1) there is probable cause;

(2) a defense to extradition specified in the Extradition Treaty or this Supplementary Treaty, and within the jurisdiction of the courts, exists; and

(3) the act upon which the request for extradition is based would constitute an offense for extradition is based would constitute an offense [sic] punishable under the laws of the United States.

Probable cause means whether there is sufficient evidence to warrant a man of reasonable caution in the belief that:

(1) the person arrested or summoned to appear is the person sought;

(2) in the case of a person accused of having committed a crime, an offense has been committed by the accused; and

(3) in the case of a person alleged to have been convicted of an offense, a certificate of conviction or other evidence of conviction or criminality exists.

ARTICLE 3

(a) Notwithstanding any other provision of this Supplementary Treaty, extradition shall not occur if the person sought establishes to the satisfaction of the competent judicial authority by a preponderance of the evidence that the request for extradition has in fact been made with a view to try or punish him on account of his race, religion, nationality, or political opinions, or that he would, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality, or political opinions.

(b) In the United States, the competent judicial authority shall only consider the defense to extradition set forth in paragraph (a) for defenses listed in Article 1 of this Supplementary Treaty. A finding under paragraph (a) shall be immediately appealable by either party to the United States district court, or court of appeals, as appropriate. The appeal shall receive expedited consideration at every stage. The time for filing a notice of appeal shall be 30 days from the date of the filing of the decision. In all other respects, the applicable provisions of the Federal Rules of Appellate Procedure or Civil Procedure, as appropriate, shall govern the appeals process.

ARTICLE 4

Article VIII, paragraph (2) of the Extradition Treaty is amended to read as follows:

(2) A person arrested upon such an application shall be set at liberty upon the expiration of sixty days from the date of his arrest if a request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of this person sought if a request for extradition is subsequently received.

## ARTICLE 5

This Supplementary Treaty shall apply to any offense committed before or after this Supplementary Treaty enters into force, provided that this Supplementary Treaty shall not apply to an offense committed before this Supplementary Treaty enters into force which was not an offense under the laws of both Contracting Parties at the time of its commission.

## ARTICLE 6

This Supplementary Treaty shall form an integral part of the Extradition Treaty and shall apply:

(a) in relation to the United Kingdom: to Great Britain and Northern Ireland, the Channel Islands, the Isle of Man and the territories for whose international relations the United Kingdom is responsible which are listed in the Annex to this Supplementary Treaty;

(b) to the United States of America;

and references to the territory of a Contracting Party shall be construed accordingly.

## ARTICLE 7

The Supplementary Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at London as soon as possible. It shall enter into force upon the exchange of instruments of ratification. It shall be subject to termination in the same manner as the Extradition Treaty.

## ANNEX

Anguilla; Bermuda; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Falkland Island Dependencies; Gibraltar; Hong Kong; Montserrat; Pitcairn, Henderson, Ducie and Oeno Islands; St. Helena; St. Helena Dependencies; The Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus; and Turks and Caicos Islands.

# EXTRADICTION ACT
## 18 U.S.C. §§ 3181-3196 (1992)

## 18 U.S.C. § 3184 (1992)

### § 3184. Fugitives from foreign country to United States

Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. Such complaint may be filed before and such warrant may be issued by a judge or magistrate of the United States District Court for the District of Columbia if the whereabouts within the United States of the person charged are not known or, if there is reason to believe the person will shortly enter the United States. If on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.

(As amended, Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7087, 102 Stat. 4409; Nov. 29, 1990, Pub.L. 101-647, Title XVI, § 1605, 104 Stat. 4843.)

## 18 U.S.C. § 3190 (1992)

### § 3190. Evidence on hearing

Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.

(June 25, 1948, ch. 645, 62 Stat. 824.)

# FEDERAL MAGISTRATES ACT

## 28 U.S.C. § 636 (1992)

§ 636. Jurisdiction, powers, and temporary assignment

(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment—

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section; and

(4) the power to enter a sentence for a misdemeanor or infraction with the consent of the parties.

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within ten days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

(2) A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrates shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate or a part-time United States magistrate who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate may exercise such jurisdiction, if such magistrate meets the bar membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate may again advise the parties of the availability of the magistrate, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved

party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court. In this circumstance, the consent of the parties allows a magistrate designated to exercise civil jurisdiction under paragraph (1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) Notwithstanding the provisions of paragraph (3) of this subsection, at the time of reference to a magistrate, the parties may further consent to appeal on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals. Wherever possible the local rules of the district court and the rules promulgated by the conference shall endeavor to make such appeal inexpensive. The district court may affirm, reverse, modify, or remand the magistrate's judgment.

(5) Cases in the district courts under paragraph (4) of this subsection may be reviewed by the appropriate United States court of appeals upon petition for leave to appeal by a party stating specific objections to the judgment. Nothing in this paragraph shall be construed to be a limitation on any party's right to seek review by the Supreme Court of the United States.

(6) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

(7) The magistrate shall, subject to guidelines of the Judicial Conference, determine whether the

record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

(d) The practice and procedure for the trial of cases before officers serving under this chapter, and for the taking and hearing of appeals to the district courts, shall conform to rules promulgated by the Supreme Court pursuant to section 2072 of this title.

(e) In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: (1) disobedience or resistance to any lawful order, process, or writ; (2) misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same; (3) failure to produce, after having been ordered to do so, any pertinent document; (4) refusal to appear after having been subpoenaed or, upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or (5) any other act or conduct which if committed before a judge of the district court would constitute contempt of such court. Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of and, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

(f) In an emergency and upon the concurrence of the chief judges of the districts involved, a United States magistrate may be temporarily assigned to perform any of the duties specified in subsection (a) or (b) of this section in a judicial district other than the judicial district for which he has been appointed. No magistrate shall perform any of such duties in a district to which he has been temporarily assigned until an order has been issued by the chief judge of such district specifying (1) the emergency by reason of which he has been transferred, (2) the duration of his assignment, and (3) the duties which he is authorized to perform. A magistrate so assigned shall not be entitled to additional compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties in accordance with section 635.

(g) A United States magistrate may perform the verification function required by section 4107 of title 18, United States Code. A magistrate may be assigned by a judge of any United States district court to perform the verification required by section 4108 and the appointment of counsel authorized by section 4109 of title 18, United States Code, and may perform such functions beyond the territorial limits of the United States. A magistrate assigned such functions shall have no authority to perform any other function within the territory of a foreign country.

(h) A United States magistrate who has retired may, upon the consent of the chief judge of the district involved, be recalled to serve as a magistrate in any judicial district by the judicial council of the circuit within which such district is located. Upon recall, a magistrate may receive a salary for such service in accordance with regulations promulgated by the Judicial Conference, subject to the restrictions on the payment of an annuity set forth in section 377 of this title or in subchapter III of chapter 83, and chapter 84, of title 5 which are applicable to such magistrate. The requirements set forth in subsec-

tions (a), (b)(3), and (d) of section 631, and paragraph (1) of subsection (b) of such section to the extent such paragraph requires membership of the bar of the location in which an individual is to serve as a magistrate, shall not apply to the recall of a retired magistrate under this subsection or section 375 of this title. Any other requirement set forth in section 631(b) shall apply to the recall of a retired magistrate under this subsection or section 375 of this title unless such retired magistrate met such requirement upon appointment or reappointment as a magistrate under section 361.

(As amended Oct 17, 1968, Pub.L. 90-578, Title I, § 101, 82 Stat. 1113; Mar. 1, 1972, Pub.L. 92-239, §§ 1, 2, 86 Stat. 47; Oct. 21, 1976, Pub.L. 94-577, § 1, 90 Stat. 2729; Oct. 28, 1977, Pub.L. 95-144, § 2, 91 Stat. 1220; Oct. 10, 1979, Pub.L. 96-82, § 2, 93 Stat. 643; Oct. 12, 1984, Pub.L. 98-473, Title II, § 208, 98 Stat. 1986; Nov. 8, 1984, Pub.L. 98-620, Title IV, § 402 (29)(B), 98 Stat. 3359; Nov. 14, 1986, Pub.L. 99-651, Title II, § 201(a)(2), 100 Stat. 3647; Nov. 15, 1988, Pub.L. 100-659, § 4(c), 102 Stat. 3918; Nov. 18, 1988, Pub.L. 100-690, Title VII, § 7322, 102 Stat. 4467; Nov. 19, 1988, Pub.L. 100-702, Title IV, § 404(b)(1), Title X, § 1014, 102 Stat. 4651, 4669; Dec. 1, 1990, Pub.L. 101-650, Title III, § 308(a), 104 Stat. 5112.)

# UNITED STATES DISTRICT COURTS FOR THE SOUTHERN AND EASTERN DISTRICTS OF NEW YORK

## JOINT RULES FOR

## GENERAL, CIVIL, CRIMINAL, ADMIRALTY AND MAGISTRATE PROCEEDINGS

EFFECTIVE OCTOBER 26, 1983
7th printing—November 1991

### Rule 9. Issuance of Warrants and Hearings

Pursuant to 18 U.S.C. Sec. 3184 magistrates are empowered to issue warrants for the apprehension of persons and conduct hearings and consider the evidence in the extradition proceedings referred to therein.